



*United States Attorney
Northern District of California*

*Ronald v. Dellums Federal Building
1301 Clay Street, Suite 340S
Oakland, California 94612-5217*

*(510) 637-3680
FAX: (510) 637-3724*

December 5, 2007

The Honorable Wayne D. Brazil
United States Magistrate Judge
1301 Clay Street
Oakland, CA 94612

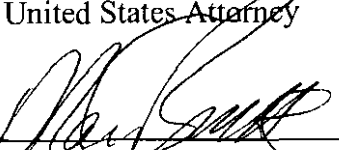
Re: United States v. Thiem Phan, CR07-0761 CW

Dear Honorable Judge Brazil:

Enclosed please find an information in the above matter. The parties request that this matter be placed on your calendar on December 14, 2007, at 10 a.m., for arraignment. The defendant is out of custody and does not need the assistance of an interpreter.

Very truly yours,

SCOTT N. SCHOOLS
United States Attorney

By: 
MAUREEN C. BESSETTE
Assistant U.S. Attorney

Enclosure
cc. Tam Nguyen, Esq.

E-filing

SCOTT N. SCHOOLS (SC 9990)
United States Attorney

FILED

DEC -3 PM 4:05

U.S. DISTRICT COURT
OAKLAND, CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

THIEM VAN PHAN,

Defendant.

No. CR

CR07-0761

VIOLATIONS: 18 U.S.C. §§ 1341, 2 -
Mail Fraud, Aiding and Abetting

OAKLAND VENUE

INFORMATION

The United States Attorney charges:

I. BACKGROUND

At all times material to this Information,

1. From at least 1992, Amland Corp. (aka Amland and Amland Construction) ("Amland"), a California corporation, was a landscaping and construction company. From approximately January 2006 through the present, Amland was located at 1401 Felipe Avenue, San Jose, California. Prior to this, from approximately 2003 through approximately January 2006, the business office was located at 9926 Gibraltar Road, Oakland, California. In December 2000, Amland entered into contracts with the U.S. Department of Transportation Federal Highway Administration ("DOT FHWA"), and the State of California Department of Transportation ("Caltrans") to perform construction and landscaping work on federally funded highway construction projects in

the State of California.

2. From at least 2001, THIEM VAN PHAN ("PHAN") was an employee at Amland responsible for the bookkeeping and payroll. In this position, PHAN generated employee paychecks based on weekly time sheets.

3. The United States Department of Transportation, through the Federal Highway Administration, funds highway construction projects throughout the United States. In California, such federal funds are administered by Caltrans, which solicits and accept bids from contractors. As a condition of such contracts, prime contractors and subcontractors, such as Amland, agree to comply with federal and/or state requirements that apply to projects paid for by federal funds. Among these requirements is that the contractor pay its employees (1) on a weekly basis and (2) the prevailing federal wage rate. Contractors accepting such public road construction contracts also agree to submit certified payroll reports for review by Caltrans and to certify that the contractor has complied with federal and/or state requirements regarding compensating its employees.

4. From approximately December 2000 through September 2004, Amland entered into five contracts with the DOT FHWA and Caltrans, to perform work on federal-aid funded highway construction projects. Amland was the contractor on five contracts. These Amland contracts each involved more than \$2,000, triggering application of 40 U.S.C. § 3142 (Rate of wages for laborers and mechanics).

COUNT ONE: (18 U.S.C. §§ 1341, 2 - Mail Fraud and Aiding and Abetting)

SCHEME TO DEFRAUD

5. Paragraphs 1 through 4 are incorporated herein by reference.

6. Beginning in approximately November 2001 and continuing through October 2006, in the Northern District of California, and elsewhere, the defendant,

THIEM VAN PHAN,

did knowingly devise and intend to devise a material scheme and artifice to defraud Amland employees, to obtain money by means of material false and fraudulent pretenses, representations, and promises, and by material omissions as follows.

7. It was part of the scheme and artifice to defraud that defendant would and did

1 submit false certified payroll reports and certified statements of compliance that
 2 misrepresented to Caltrans the amount and frequency of payments made by Amland to its
 3 employees. These certified payroll reports and certified statements of compliance
 4 purported to show that Amland employees working on the Amland contracts were paid
 5 once each week and received the federally mandated prevailing wage rate, when in fact
 6 these employees were not paid each week and did not receive the prevailing wage rate
 7 because defendant PHAN took certain paychecks meant for Amland employees and
 8 cashed the checks for his own personal enrichment.

9 USE OF THE MAIL

10 8. On or about February 2, 2005, in the Northern District of California and
 11 elsewhere, for the purpose of executing the aforementioned scheme and artifice to
 12 defraud, and attempting to do so, the defendant,

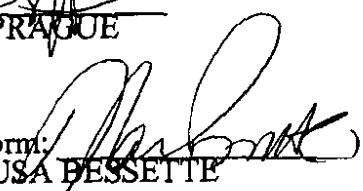
13 THIEM VAN PHAN,

14 did knowingly cause to be placed in a post office and authorized depository for mail
 15 matter to be sent and delivered by the Postal Service, a false certified statement of
 16 compliance and a false payroll report, from Amland in San Jose, California to 21030
 17 Redwood Road, Castro Valley, California, 94544, all in violation of Title 18, United
 18 States Code, Sections 1341 and 2.

19 Dated:

20
 21 SCOTT N. SCHOOLS
 22 United States Attorney

23 
 24 W. DOUGLAS SPRAGUE
 25 Chief, Oakland

26 (Approved as to form: )

27 AUSA BESSETTE
 28

E-filing

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURTBY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT
☐ SUPERSEDING**OFFENSE CHARGED**

Violation: 18 U.S.C. §§ 1341, 2-Mail Fraud, Aiding and Abetting

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony**PENALTY:**

Maximum term of imprisonment 20 years, \$250,000 fine, 3 years supervised release, \$100 special assessment

PROCEEDINGName of Complainant Agency, or Person (& Title, if any)
U.S. Department of Transportation, Office of Inspector General☐ person is awaiting trial in another Federal or State Court, give name of court☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:☐ U.S. Atty ☐ Defense☐ this prosecution relates to a pending case involving this same defendant☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded underSHOW
DOCKET NO.MAGISTRATE
CASE NO.Name and Office of Person
Furnishing Information on
THIS FORM

SCOTT N. SCHOOLS

☒ U.S. Atty ☐ Other U.S. AgencyName of Asst. U.S. Atty
(if assigned)

MAUREEN BESSETTE, AUSA

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

Thien Van Phan

DISTRICT COURT NUMBER

CR07-0761

FILED
DEC - 3 2007RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND**DEFENDANT****IS NOT IN CUSTODY**

- 1) ☒ Has not been arrested, pending outcome this proceeding.
If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges
- If answer to (6) is "Yes", show name of Institution

Has detainer
been filed?☐ Yes
☐ NoIf "Yes"
give date
filedDATE OF
ARREST

Month/Day/Year

Or... If Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____